

*Attorney for Plaintiff*

IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

PACIFIC CENTURY INTERNATIONAL  
LTD.,  
Plaintiff,  
v.  
DOES 1-48,  
Defendant(s).

**No. C-11-03823 MEJ**

**DECLARATION OF BRETT L. GIBBS  
IN RESPONSE TO COURT’S ORDER  
FOR PLAINTIFF TO FILE  
DECLARATION**

I, Brett L. Gibbs, declare as follows:

1. I am an attorney at law licensed to practice in California, and admitted in the Northern District of California. My business address is 38 Miller Avenue, #263, Mill Valley, CA, 94941. I am counsel of record for Plaintiff in this matter.

2. On December 1, 2011, the Court issued an order requiring Plaintiff to file a declaration addressing seven specific case-management related inquiries. This is the responding Declaration. Attached to this Declaration is Exhibit A, which addresses four of the first five of the Court's inquiries regarding data information. The information contained in Exhibit A is incorporated as if stated in this declaration, and based on my belief that the recordation of these events is true and accurate.

3. Inquiry number four requires Plaintiff to provide the exact “date on which the ISP served the subpoena on the Doe Defendant.” Per the Court’s order, the Internet Service Provider has a 30-day window within which it must provide a copy of the subpoena to the individual subscriber. I

1 am informed and believe that all subpoenas are served upon subscribers accordingly. However, the  
2 Internet Service Providers do not report to me, or my firm, regarding the exact date/time that they  
3 serve the subpoenas.

4 4. Inquiry number six requests a response to the statement that: “If Plaintiff has obtained  
5 the Doe Defendant’s identifying information, an explanation as to why the defendant has not been  
6 named and why no proof of service has been filed, as well as why the Court should not dismiss the  
7 defendant pursuant to Federal Rule of Civil Procedure 4(m).” As the Court will note on Exhibit A,  
8 the only subpoenas returned to Plaintiff were returned on December 1, 2011. In other words,  
9 Plaintiff has had minimal opportunity to establish contact with those individuals, let alone serve  
10 them in this manner. For these reasons, the Court should not dismiss the case pursuant to Rule 4(m)  
11 because Plaintiff, as explained, has good cause to extend time for service of the on the Doe  
12 Defendants.

13 5. Inquiry number seven requests a response to the statement that: “If Plaintiff has  
14 obtained the Doe Defendant’s identifying information and the location is outside of the Northern  
15 District of California, why the Court should not dismiss the Doe Defendant for lack of jurisdiction  
16 and/or improper venue.” The Court should not dismiss any Doe Defendants for lack of personal  
17 jurisdiction because to date none of the subpoena responses indicate that subscribers reside outside  
18 of the State of California. Plaintiff used geolocation in an attempt to restrict the Doe Defendants to  
19 persons in California. Although at best imperfect, geolocation has been successful in this regard thus  
20 far. The Doe Defendants—to the extent they reside in California—are unquestionably subject to  
21 personal jurisdiction in the Northern District of California. *Brayton Purcell LLP v. Recordon &*  
22 *Recordon*, 575 F.3d 981, 984 n. 3 (9th Cir. 2009). The venue inquiry is premature at this early stage  
23 of receiving the Doe Defendants’ identifying information. First, Plaintiff is actively involved in  
24 verifying the identifying information provided by the ISP’s in the subpoena responses that have been  
25 fulfilled—so there is no confirmation that the addresses provided by the ISP’s are up-to-date.  
26 Second, once the addresses are verified Plaintiff still needs to verify that the infringers are not  
27 subject to service in this District—either by reason of attending school in this District, making

1 business trips to this District, vacationing in this District or otherwise being present in this District.  
2 Only after these determinations have been made would a venue inquiry be appropriate.

3 6. To cure any venue concerns, Plaintiff affirms that, should it discover that certain Doe  
4 Defendants do in fact reside outside of the Northern District of California and are not likely to be  
5 subject to service in this District, then Plaintiff will dismiss them without prejudice from this case,  
6 and pursue them separately in the relevant district.

7 7. I declare under penalty of perjury that the foregoing is true and correct based on my  
8 own personal knowledge, except for those matters stated on information and belief, and those  
9 matters I believe to be true. If called upon to testify, I can and will competently testify as set forth  
10 above.

11  
12 Respectfully Submitted,

13 PRENDA LAW INC.

14 **DATED: December 5, 2011**

15  
16 By: /s/ Brett L. Gibbs, Esq.  
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